

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MURRAY HALL, III,

Plaintiff,

v.

9:17-CV-1069
(GTS/DEP)

ANTHONY J. ANNUCCI, Comm'r.; DANIEL
MARTUSCELLO, Dep. Comm'r. for Admin. Servs.,
DOCCS, f/k/a Daniel Mortuscello; JEFF MCKOY,
Dep. Comm'r for Program Servs., DOCCS;
BRANDON SMITH, Super., Greene C.F.; and
DEACON YOUNG, Chaplain, Greene. C.F.,

Defendants.

APPEARANCES:

OF COUNSEL:

MURRAY HALL, III
Plaintiff, *Pro Se*
93 North Fair Field Drive
Dover, Delaware 19901

HON. BARBARA D. UNDERWOOD
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

KYLE W. STURGESS, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Murray Hall, III (“Plaintiff”) against the five above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”) are (1) Defendants’ motion for summary judgment and (2) United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Defendants’ motion be granted. (Dkt. Nos. 23, 32.) None

of the parties have filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein;² Defendants' motion for summary judgment is granted; and Plaintiff's Amended Complaint is dismissed in its entirety.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 32) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 23) is **GRANTED**; and it is further

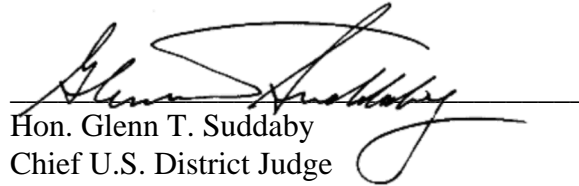
¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

² The Court would add only that an alternative reason for not affording Plaintiff an opportunity to amend his pleading before dismissing his action is that he has already been afforded such an opportunity to amend (his operative pleading being his *Amended Complaint*). *See Abascal v. Hilton*, 04-CV-1401, 2008 WL 268366, at *8 (N.D.N.Y. Jan. 13, 2008) (Kahn, J., adopting, on *de novo* review, Report-Recommendation by Lowe, M.J.) ("[G]ranting a *pro se* plaintiff an opportunity to amend is not required where the plaintiff has already been given a chance to amend his pleading."), *aff'd*, 357 F. App'x 388 (2d Cir. 2009); *see also Bratton v. Fitzpatrick*, 12-CV-0204, 2012 WL 4754558, at *2 & n.2 (N.D.N.Y. Oct. 4, 2012) (Suddaby, J.) (collecting cases).

ORDERED that Plaintiff's Amended Complaint (Dkt. No. 13) is **DISMISSED** in its entirety, and the Clerk of Court shall enter Judgment for Defendants and close this action.

The Court certifies that an appeal from this Decision and Order would not be taken in good faith pursuant 28 U.S.C. § 1915(a)(3).

Dated: December 17, 2018
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge